Such action on the part of the court would, however, be open to grave objections. The doctrine of the immunity of a sovereign in his own courts is thoroughly and unqualifiedly established in our system of law.[16] Though in particular cases its reason may be attacked as valueless, its existence must be recognized, and for a court to overthrow or modify it would be judicial legislation. Further, in every case the question would arise, how to determine which undertakings should and which should not subject the state to suits. Rules of law would not answer that question. An examination of the particular enterprise, considered in its relation to other state undertakings, with a careful weighing of the conflicting interests and of the various considerations of expediency involved, would be necessary. Such a problem is in its nature one with which legislatures rather than courts should deal. Actually, legislatures do deal with it. When they provide for administration of state activities, they explicitly declare in what manner claims against the state may be settled, and what legal proceedings, if any, may be brought against it.[17] Such provisions are results arrived at with deliberation, and unless the courts can find therein consent expressed or implied, no suits against the state should be permitted.[18]

RECENT CASES

ADMIRALTY — JURISDICTION — IMMUNITY OF GOVERNMENT VESSELS FROM ARREST. — A libel *in rem* was brought against a ship owned by the Italian Government and operated by a ministry of that government in regular commercial business. Proctors for the ship asserted the sovereign immunity in its favor. *Held*, that the libel may be sustained. *The Pesaro*, Dist. Ct., S. D. N. Y., Oct. 1, 1921.

For a discussion of the principles involved, see NOTES, *supra*, p. 330.

CONFLICT OF LAWS — PARTNERSHIP — WAR — ALIEN PROPERTY CUSTODIAN — DISSOLUTION OF FOREIGN PARTNERSHIP BY DECLARATION OF WAR. — In 1912, X, a citizen and resident of the United States, and Y, a subject and resident of Germany, formed a partnership, doing business both in Germany and the United States. War was declared by the United States against the Imperial German Government in 1917. Pursuant to the provisions of the Trading with the Enemy Act, the domestic assets of the partnership came into the custody of the Alien Property Custodian. X sues the Alien Property Custodian, under a statute, seeking to have the defendant pay over to the plaintiff a partner's share of the property. (TRADING WITH THE ENEMY ACT, § 9; 40 STAT. AT L. 419; U. S. COMP. STAT., ANN. SUPP., 1919, § 3115½e.) The defendant contends that the partnership was organized under German law, and that therefore, by German law, it was not dissolved on the out-

[16] Beers *v.* State of Arkansas, 20 How. (U. S.) 527, 529 (1857); Smith *v.* Reeves, 178 U. S. 436, 448 (1899). See 15 HARV. L. REV. 59.

[17] This was true with respect to the statute in the principal case. See 1919 LAWS OF NORTH DAKOTA, c. 147, § 22. Garnishment proceedings were not included within the specific classes of suits permitted.

[18] For a discussion of the general question of sovereign immunity, see the dissenting opinion of Mr. Justice Iredell in Chisholm *v.* Georgia, 2 Dallas (U. S.), 419, 429 (1793).

break of the war. *Held*, that, assuming the facts to be as the defendant contends, the plaintiff is entitled to judgment. *Rossie* v. *Garvan*, 274 Fed. 447 (D. Conn.).

The *lex loci contractus* governs the discharge of a contract. *Tenant* v. *Tenant*, 110 Pa. St. 478, 1 Atl. 532. See DICEY, CONFLICT OF LAWS, 2 ed., 569 *et seq.* It seems, by analogy, that the law governing the creation of a partnership should determine what acts cause its dissolution. And *cf. King* v. *Sarria*, 69 N. Y. 24. But foreign law, even where normally applicable, will not be applied when repugnant to clear domestic policy. *The Kensington*, 183 U. S. 263. See 15 HARV. L. REV. 579. And see 2 WHARTON, CONFLICT OF LAWS, 3 ed., §§ 428, 490–494. At common law, a declaration of war dissolves a previously existing partnership composed of a resident and an enemy. *Stevenson & Sons, Ltd.* v. *Aktiengesellschaft für Cartonnagen-Industrie*, [1918] A. C. 239. See *Griswold* v. *Waddington*, 16 Johns. (N. Y.) 438, 488. And see 28 YALE L. J. 680, 681; 6 VA. L. REV. 365. That doctrine has been fortified by an expression of legislative intent. See TRADING WITH THE ENEMY ACT, § 3a (unlawful to trade with enemy); § 3c (unlawful to communicate with enemy); 40 STAT. AT L. 412; U. S. COMP. STAT., ANN. SUPP., 1919, § 3115½b (a), (c). *Cf. McStea* v. *Matthews*, 50 N. Y. 166; *Matthews* v. *McStea*, 91 U. S. 7. And so strong is this policy that an agreement that the partnership shall continue is void. *Planters' Bank* v. *St. John*, Fed. Cas., No. 11,208 (Circ. Ct., S. D. Ala.). The court therefore properly held that a contrary German rule would not be followed. See *Mayer* v. *Garvan*, 270 Fed. 229, 237 (D. Mass.). It may be suggested that under a possible interpretation of the Trading with the Enemy Act, it is immaterial whether or not there is a dissolution by the common-law rule. It is arguable that the Alien Property Custodian takes title to the seized property, that the ownership of the partnership ends by force of the Act, and that the domestic partner has such an "interest, right, or title" in the property as will enable him to maintain this action.

CONSTITUTIONAL LAW — POWERS OF THE EXECUTIVE — MARTIAL LAW — ABSENCE OF MILITARY FORCE. — The governor of West Virginia, by proclamation, declared the existence of a state of war in Mingo County, inaugurated martial law, and required obedience to certain regulations. At the order of the acting adjutant general, but before a military force was at hand, the petitioners were arrested and imprisoned by a sheriff for violations of these regulations. Writs of *habeas corpus* were granted and returns were made. *Held*, that the prisoners be discharged. *Ex parte Lavinder*, 108 S. E. 428 (W. Va.).

There are two types of martial law, punitive and preventive. Under the former, military courts are established to try civil offenders; and this can be lawfully done only within the actual zone of military operations. *Ex parte Milligan*, 4 Wall. (U. S.) 2. See 34 HARV. L. REV. 659. The object of preventive martial law is to quell disturbance and maintain order; and while civil offenders cannot be tried under it in military courts, they can be arrested and detained when necessary. *In re McDonald*, 49 Mont. 454, 143 Pac. 947. The necessity for preventive martial law may be conclusively determined by the governor. *Moyer* v. *Peabody*, 212 U. S. 78; *Hatfield* v. *Graham*, 73 W. Va. 759, 81 S. E. 533; *In re McDonald*, *supra*. When troops are at hand, a proclamation of martial law *ipso facto* establishes it. See 2 WINTHROP, MILITARY LAW AND PRECEDENTS, 2 ed., 1278. It is submitted that even though troops are unavailable, preventive martial law may be thus established. The necessity for martial law exists only when civil authority is inadequate to avoid a reign of lawlessness. Unless this power is granted, — the necessity being admitted, — lawlessness ensues. To meet such an emergency, the governor